

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-132
Table of Allotments,)	RM-10709
FM Broadcast Stations.)	
(Springfield, Tennessee and Oak Grove,)	
Kentucky))	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 4, 2003

Released: June 6, 2003

Comment Date: July 28, 2003

Reply Comment Date: August 12, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Rule Making filed Saga Communications of Tuckesse, LLC ("Saga Communications"), licensee of Station WJOI-FM, Channel 232A, Springfield, Tennessee, proposing the reallocation of Channel 232A from Springfield, Tennessee to Oak Grove, Kentucky, as that community's first local aural transmission service, and the modification of its license for Station WJOI-FM accordingly. Saga Communications stated its intention to apply for Channel 232A at Oak Grove if the reallocation is granted.

2. Saga Communications filed its request pursuant to Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.¹ When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.²

3. In support of its proposal, Saga Communications states that Channel 232A may be allotted to Oak Grove consistent with the Commission's minimum distance separation requirements, placing a city-grade signal over 97% of the Clarksville, Tennessee-Kentucky Urbanized Area ("Clarksville Urbanized Area"). Saga Communications notes that the reallocation of Channel 232A to Oak Grove is mutually exclusive with the current use of Channel 232A at Springfield. The reallocation of Channel 232A could provide a first local aural transmission service at Oak Grove and would not deprive Springfield of a sole

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part 5 FCC Rcd 7394 (1990).

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

local service.³ Oak Grove is a community listed in the census with a 2000 U.S. Census population of 7,064 persons. Oak Grove has an elected mayor, a six-member city council, a city attorney and a city clerk. Oak Grove has its own water and sewer systems, police department, volunteer fire department, volunteer ambulance service, chamber of commerce, cable television system, health care professionals, and health care facility. It has its own local phone directory, post office, and zip code (42262). There are churches and commercial businesses. Schools are provided by the Christian County Board of Education.

4. Oak Grove is located inside the Clarksville Urbanized Area. Station WJOI-FM would place a 70 dBu contour over most of the Clarksville Urbanized Area from its proposed location at Oak Grove. In accordance with Commission policy, the rulemaking proponent must demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.⁴ Saga Communications has provided a *Tuck* showing to demonstrate that Oak Grove is sufficiently independent of the Clarksville Urbanized Area pursuant to the criteria set forth in *Tuck-KFRC*.⁵

5. Saga Communications proposal warrants consideration since the reallocation of Channel 232A at Oak Grove could provide the community with its first local aural transmission service while not depriving Springfield of its sole local aural transmission service. Saga Communications has provided information to show that Oak Grove is an independent community. Saga Communications submitted a gain and loss study since it is proposing to change the transmitter site for Station WJOI-FM. The study demonstrates that the 60 dBu contour of WJOI-FM at Springfield covers 1,867 square kilometers, encompassing a population of 82,971 persons while the proposed site at Oak Grove would cover 2,516 square kilometers and 188,254 persons. The population within the 2,222 square kilometer gain area is 182,424 persons. The loss area of 1,573 square kilometers contains 77,141 persons. Saga Communications alleges that there is no loss area resulting from the proposed WJOI-FM change receiving fewer than five aural reception services. Saga Communications states that there are 5 AM and 9 FM stations that provide 100% coverage to the loss area. Therefore, the loss area is well-served.⁶ Saga Communications contends the reallocation of Channel 232A to Oak Grove would result in a significant gain in population served by Station WJOI-FM. Channel 232A can be allotted to Oak Grove, Kentucky, in compliance with the minimum distance separation requirements of the Commission's Rules, provided there is a site restriction of 9.3 kilometers (5.8 miles) east of Oak Grove, Kentucky.⁷ As requested, we shall propose to modify the license of Station WJOI-FM to specify operation on Channel 232A at Oak Grove, Kentucky, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest pertaining to the use of Channel 232A at Oak Grove.

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Oak Grove, Kentucky and Springfield, Tennessee, as follows:

³ Springfield would continue to receive local service from daytime-only Station WSGI(AM) and "unlimited" Station WJQY(AM).

⁴ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (M.M. Bur. 1995).

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*") and *RKO General*, 5 FCC Rcd 3222 (1990) ("*KFRC*").

⁶ See *Douglas, Tifton, and Unionville, GA*, 10 FCC Rcd 7706, 7707 (M.M. Bur. 1995) and *Wray and Otis, Colorado*, 13 FCC Rcd 2612 (M.M. Bur. 1998).

⁷ The reference coordinates for Channel 232A at Oak Grove are 36-38-23 North Latitude and 87-20-39 West Longitude.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Oak Grove, Kentucky	-----	232A
Springfield, Tennessee	232A	-----

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **July 28, 2003**, and reply comments on or before **August 12, 2003**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Gary S. Smithwick, Esquire
 Smithwick & Belendiuk, P.C.
 5028 Wisconsin Avenue, N.W.
 Suite 301
 Washington D.C. 20016

6. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸

8. For further information concerning the proceeding listed above, contact Rolanda F. Smith, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the

⁸ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.